

Message

From: David A. Ludder [davidaludder@enviro-lawyer.com]
Sent: 10/28/2019 1:00:28 PM
To: Dorka, Lilian [Dorka.Lilian@epa.gov]
CC: Title VI Complaints [Title_VI_Complaints@epa.gov]
Subject: Request for Waiver of 180-day Time Limitation for Filing Administrative Complaint under 40 C.F.R. § 7.120
Attachments: 2019.06.04 Request_for_Hearing.pdf

Ms. Lilian Dorka, Director
 External Civil Rights Compliance Office
 U.S. Environmental Protection Agency
 Washington, D.C.

Re: Request for Waiver of 180-day Time Limitation for Filing Administrative Complaint under 40 C.F.R. § 7.120

Dear Ms. Dorka:

On behalf of my clients who are African-American residents living near the City of Dothan Sanitary Landfill in Dothan Alabama, I request a waiver of the 180-day time limitation for filing an administrative complaint under 40 C.F.R. § 7.120 concerning the Alabama Department of Environmental Management's reissuance and modification of Solid Waste Disposal Facility Permit No. 35-06 on May 6, 2019. As ground therefor, I show as follows:

1. On May 6, 2019, the Alabama Department of Environmental Management reissued and modified Solid Waste Disposal Facility Permit No. 35-06 to include a lateral expansion of the City of Dothan's municipal solid waste landfill.
2. Absent a waiver of the 180-day time limitation for the filing of an administrative complaint under 40 C.F.R. § 7.120 concerning the Alabama Department of Environmental Management's reissuance and modification of Solid Waste Disposal facility Permit No. 35-06, the filing of such a complaint would be due on November 2, 2019.
3. On June 4, 2019, residents living near the existing and proposed expansion of the municipal solid waste landfill filed a request with the Alabama Environmental Management Commission for an administrative hearing to contest the reissuance and modification of Solid Waste Disposal Facility Permit No. 35-06. A copy of the request is attached hereto. Included in the request for hearing is an allegation that the Alabama Department of Environmental Management's reissuance and modification of Solid Waste Disposal Facility Permit No. 35-06 contravenes the Department's "Non-discrimination Statement."
4. The filing of the request for hearing with the Alabama Environmental Management Commission does not stay Solid Waste Facility Permit No. 35-06. However, the Commission is authorized to disapprove or modify the reissuance and modification of Solid Waste Disposal Facility Permit No. 35-06. The Commission's action becomes the "final" action of the Alabama Department of Environmental Management, subject thereafter to judicial review. Ala. Code 1975 § 22-22A-7(c).
5. The Alabama Environmental Management Commission appointed a hearing officer who conducted a seven and one-half day administrative hearing on the request for hearing. Testimony concluded on September 19,

2019. Transcripts of the hearing became available on October 3, 2019. The parties are currently engaged in drafting briefs and proposed recommended orders for the hearing officer's consideration.

6. Inasmuch as the Alabama Environmental Management Commission may disapprove or modify the reissuance and modification of Solid Waste Disposal Facility Permit No. 35-06, the extent of any disparate impacts that may violate 40 C.F.R. § 7.35 may change with that disapproval or modification. Indeed, if the Commission disapproves Solid Waste Disposal Facility Permit No. 35-06, any present claim of violation of 40 C.F.R. § 7.35 would become moot.

Accordingly, I request - on behalf of my clients - a waiver of the 180-day time limitation for the filing of an administrative complaint under 40 C.F.R. § 7.120 concerning the Alabama Department of Environmental Management's issuance and modification of Solid Waste Disposal Facility Permit No. 35-06 until 60 days after the Alabama Environmental Management Commission enters its final decision to approve, disapprove or modify the May 6, 2019 reissuance and modification of Solid Waste Disposal Facility Permit No. 35-06.

Respectfully,

David A. Ludder

Law Office of David A. Ludder, PLLC

9150 McDougal Ct. | Tallahassee, FL 32312-4208

Phone (850) 386-5671 | Fax (203) 306-4110

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